

**BEFORE THE FEDERAL ELECTION COMMISSION**

**ENFORCEMENT PRIORITY SYSTEM  
DISMISSAL REPORT**

**MUR: 7186**

**Complaint Receipt Date: Nov. 3, 2016**

**Response Date(s): Nov. 14, 2016**

**Respondents: Kathy Szeliga**

**Kathy for Maryland and Paul Kilgore,  
as treasurer**

**(collectively the "Committee")**

**EPS Rating:**

**Alleged Statutory/  
Regulatory Violations:**

**52 U.S.C. § 30120(d)(1)(B)(ii)**

**11 C.F.R. § 110.11(c)(3)(ii)-(iii)**

The Complaint alleges that Kathy Szeliga, a candidate for U.S. Senate, and Kathy for Maryland, Szeliga's authorized committee, violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by airing a television advertisement that failed to include a written statement that Szeliga approved the advertisement.<sup>1</sup> Instead, the Complaint alleges that the advertisement contained only an inconspicuous disclaimer stating "Paid for by Kathy for Maryland."<sup>2</sup>

The Act requires that television communications by candidates contain disclaimers including, among other things, a "stand by your ad" statement that identifies the candidate and states that the candidate approved the communication.<sup>3</sup> The required statement must be spoken by the candidate, and must also appear in clearly readable writing at the end of the communication.<sup>4</sup> Commission regulations provide that the written statement is "clearly readable" if it: (1) appears in letters equal to or greater than four percent of the vertical picture height; (2) is visible for a period of

<sup>1</sup> The Complaint also alleges that the advertisement "violates the Communication Act of 1934" and thus disqualifies Respondents for political advertising rates. This allegation falls outside of the Commission's jurisdiction and therefore we do not address it.

<sup>2</sup> The ad is available at <https://www.youtube.com/watch?v=jpXNz9xZr5Y&feature=youtube>.

<sup>3</sup> 52 U.S.C. § 30120; 11 C.F.R. § 110.11(c)(3)(ii).

<sup>4</sup> 11 C.F.R. § 110.11(c)(3)(ii)-(iii).

at least four seconds; and (3) appears with a reasonable degree of color contrast between the background and the text of the statement, and is no less than the color contrast between the background and the largest type used in the communication.<sup>5</sup>

The disclaimer here was technically noncompliant because it failed to include the written statement that the candidate approved the communication. Instead, the last five seconds of the ad displays a written statement that reads "Paid for by Kathy for Maryland."<sup>6</sup> The advertisement did include the candidate's spoken "stand by your ad" disclaimer.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating and the technical nature of the violations, coupled with the candidate's spoken "stand by your ad" acknowledgement, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.<sup>7</sup> We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

<sup>5</sup> 11 C.F.R. § 110.11(c)(3)(iii).

<sup>6</sup> The written disclaimer appears not to satisfy the "clearly readable" requirement. The written disclaimer appears in white lettering, and, unlike the largest text in the ad, it is not contrasted against a blue background.

<sup>7</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985)

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